



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2485

OR94-865

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26621.

The Texas Department of Transportation (the "department") has received a request for information relating to the department's selection of a proposal for the Business Information Systems Plan. Specifically, the requestor seeks "copies of the proposal selected for the Business Information Systems Plan ("BISP"), the proposal evaluation team's selection criteria and results, and a copy of the resulting contract." You have submitted the requested proposal and contract to us for review.¹ You claim that section 552.110 of the Government Code excepts it from required public disclosure.

We have received a brief under section 552.305 of the Government Code from the private party interested in this matter, Deloitte & Touche, outlining its objections based on the section 552.110 exception to releasing information. Deloitte & Touche claims that section 552.110 of the Government Code excepts its proposal and portions of its proposal contained in the contract from required public disclosure.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and

¹You have not submitted or addressed the remainder of the requested information. We assume, therefore, that it has been or will be made available to the requestor, to the extent that it exists. See Open Records Decision No. 363 (1983).

(2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]*

RESTATEMENT OF TORTS § 757 cmt. b (1939). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept the private owner's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5.² In Open Records Decision No. 319 (1982), this office concluded that section 552.110 ordinarily excepts technical information relating to substance of a proposal, but not information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing.

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are


(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, 306 at 2 (1982); 255 (1980) at 2. When an agency or company fails to provide relevant information regarding factors necessary to make a 552.110 claim, a governmental body has no basis for withholding the information under section 552.110. *See* Open Records Decision No. 402 (1983) at 2.

We have examined the submitted information. We conclude that the respondent has made a prima facie case that most of the proposal constitutes trade secrets. In addition, the respondent has established a prima facie case with respect to Attachment 7 to the requested contract, titled "Proposed Methodology." Deloitte & Touche, however, has not made a prima facie case that the resumes contained in Section X and the schedules contained in Section XI constitute trade secrets. Deloitte & Touche has also failed to make a prima facie case that the requested contract, except for Attachment 7, constitutes a trade secret.³ Accordingly, the department may not withhold this information from public disclosure under section 552.110 of the Government Code and must release it in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 26621

cc: Mr. Brad Englert
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³We note that section 552.022 of the Government Code specifically makes public a "contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law." *But see* Open Records Decision No. 541 (1990) at 6-13 (finding some parts of contract excepted from disclosure as trade secrets).